SASKATCHEWAN MLA CONSTITUENCY OFFICE

ACCESS & PRIVACY GUIDE

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Saskatchewan Information and Privacy Commissioner

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Caution: The following is only a summary of relevant laws. The actual text of the statute or regulation should always be consulted for the precise wording.

SASKATCHEWAN ACCESS/PRIVACY LAWS

In Saskatchewan, there are 6 different legal instruments that are focused exclusively on access to information and privacy or both. These consist of:

Freedom of Information and Protection of Privacy Act **("the FOIP Act")**

This law applies to records in the custody or under the control of a "government institution". That includes all provincial government departments and a long list of provincial agencies and Crown Corporations. The list of these bodies can be found in the Freedom of Information and Protection of Privacy Act Regulation. The law sets out a process whereby someone can apply for access to records. In addition it prescribes rules for the collection, use and disclosure of personal information by those government institutions. There is a right to complain to the Saskatchewan Information and Privacy Commissioner. The Justice Department is responsible for administration.

Freedom of Information and Protection of Privacy Regulations ('the FOIP Regulations")

The regulation prescribes the fees that can be charged under the FOIP Act. Consent requirements are described. There is also a list of government institutions subject to the FOIP Act. There is a lengthy list of permitted disclosures of personal information.

Local Authority Freedom of Information and Protection of Privacy Act **("the LA FOIP Act")**

This law parallels the FOIP Act but covers local authorities. This includes municipalities, library boards, boards of education, regional colleges, SIAST, universities and other bodies listed in the regulation. There is a right to complain to the Saskatchewan Information and Privacy Commissioner. The Justice Department is responsible for administration.

Local Authority Freedom of Information and Protection of Privacy Regulations ("the LA FOIP Regulations")

The regulations stipulate permitted fees, list boards, commissions and other bodies prescribed as local authorities and specify a lengthy list of permitted disclosures of personal information.

***Health Information Protection Act* ("HIPA")**

This law sets out rules for the collection, use and disclosure of personal health information by "trustees". This includes Saskatchewan Health, Regional Health Authorities, physicians, pharmacists and health providers. There is provision for access by an individual to their personal health information. It provides a right to complain to the Saskatchewan Information and Privacy Commissioner. The Health Department is responsible for administration.

There are no regulations under HIPA at the time this document was prepared.

Privacy Act

This law allows someone to sue for an invasion of their privacy and to seek damages, an injunction to stop the invasion or an order for the return of personal articles. This focuses on access to Saskatchewan courts and is wholly independent of the Information and Privacy Commissioner and the three other statutes that he oversees.

PRACTICE SUGGESTION

You may find it useful to download copies of these statutes and regulations and keep them in a single 3 ring binder for ease of reference. Each of the bodies subject to the FOIP Act, the LA FOIP Act and HIPA should have someone designated as a FOIP or HIPA coordinator. It would be useful to keep in the same binder a list of the names and contact information for those coordinators. Those persons should be helpful in assisting a constituent who wishes to exercise his or her 'information rights'.

You can find a copy of these laws by going to the Queen's Printer website and clicking on the title of the particular law. There is no cost to download a copy of the law.

In addition, there are many other Saskatchewan statutes and regulations that make some provision for access or privacy. For example, the *Rural Municipalities Act* specifically provides that certain records and information are available for public access. In the health field, you will be aware that there are privacy and/or access provisions in the enabling statutes for various health professions and disciplines and in the codes of ethics for professions.

Since constituents may not be clear on the division of powers and which privacy laws are federal and which provincial, it may be useful to be aware of those federal laws that are exclusively focused on access/privacy rules.

FEDERAL ACCESS/PRIVACY LAWS

Privacy Act

This sets out the rules for the collection, use and disclosure of personal information by federal government departments and agencies. There is a provision for access by an individual to their personal information. It provides a right to complain to the Privacy Commissioner of Canada. If your constituent has this kind of problem you can refer them to their Member of Parliament or to the federal Privacy Commissioner at:

Federal Privacy Commissioner
112 Kent Street
Ottawa, Ontario
K1A 1H3

Telephone: (613) 995-8210
Toll-free: 1-800-282-1376
Fax: (613) 947-6850
e-mail: info@privcom.gc.ca

Access to Information Act

This sets out the rules for access to records in the custody or control of federal government departments and agencies. It provides a right to complain to the Information Commissioner of Canada. If your constituent has this kind of problem you can refer them to their Member of Parliament or to the federal Information Commissioner at:

The Information Commissioner of Canada
Place de Ville, Tower B
112 Kent Street, 22nd Floor
Ottawa, Ontario
K1A 1H3

Telephone: (613) 995-2410 (National Capital Region)
Toll-free: 1-800-267-0441
Fax: (613) 947-7294
e-mail: general@infocom.gc.ca

You can also encourage your constituent to access the INFORSOURCE website to find out the kinds of records and information available in different federal departments and agencies and for the contact information of the privacy/access coordinator of the appropriate office.

Personal Information Protection and Electronic Documents Act **("PIPEDA")**

This federal law sets out rules for the collection, use and disclosure of personal information by private sector businesses and organizations. Prior to January 1, 2004 it only applies to federally regulated businesses such as chartered banks, airlines and telecommunications companies. Since January 1, 2004 it has applied to virtually all businesses in Saskatchewan not already subject to the FOIP or LA FOIP Acts. It provides a right to complain to the Privacy Commissioner of Canada.

PRACTICE SUGGESTION:

You will likely have constituents who will not understand how a federal law can prescribe the rules for the collection, use and disclosure of personal information by local businesses and organizations. Many will assume that this is a provincial initiative and a provincial statute. Also contributing to the confusion is the fact that some provinces such as Quebec, British Columbia and Alberta have passed private sector privacy laws to displace PIPEDA. In those three provinces, complaints will go to and be handled by the provincial Information and Privacy Commissioner. If the complaint appears to clearly relate to a matter under PIPEDA, you may have to make it very clear that their complaint must be dealt with by the federal Privacy Commissioner and that the Saskatchewan Commissioner has no jurisdiction to address such complaints. If you are not clear which law applies, you can certainly refer your constituent to our office or call our office for advice.

HOW TO MAKE AN ACCESS REQUEST

PRACTICE SUGGESTION:

Public bodies should understand that processing access requests under these laws is the most time intensive, most expensive and most cumbersome way to provide someone with information. Access/Privacy Coordinators for those public bodies are normally trained to find ways wherever possible to make information available informally without going through the formal statutory process. It is therefore always best to contact the Coordinator for the public body in question and attempt to get the information sought informally.

An applicant first needs to know which public body may have the information sought. That will determine which law to proceed under. There are a couple of tools that may be useful to your office or your constituent.

The *2000 Access Directory* should be in your constituency office. If you don't have one, contact Administrative Services, Support Services and Freedom of Information unit within Saskatchewan Justice. This contains information about the FOIP Act, a description of common records, contact information for Coordinators and advice on how to make an access request.

The FOIP/LA FOIP Administrative Coordinator can answer questions and help you identify the records you want. These people can be very helpful in getting your constituent the information or records they are looking for.

Once you have identified the appropriate public body and determined that informal access is not possible, you should proceed to make a formal access request to that public body.

The prescribed Access Request Form is attached to this Guide. (page 18)

For more particulars of what is required of a public body when that body receives an access request, see our helpful tips sheet available at www.oipc.sk.ca under Resources.

FEES

There is no application fee for an access request under the FOIP Act. There is a $20.00 application fee under the LA FOIP Act.

There is a fee for searching for records and preparing them for disclosure calculated at the rate of $15 for 30 minutes. There is no such fee for the first 2 hours for a FOIP request or 1 hour for an LA FOIP request. If the fees are more than $50 the public body must provide a fee estimate. One half of the estimated amount must be paid before the processing of the application proceeds and the balance must be paid before the delivery of the records.

Fees can be waived if payment of the fees would constitute a substantial hardship and a waiver would be in the public interest or the information is personal information of the applicant.

Explanatory Note

In all jurisdictions with access to information legislation, it is common that the fees recovered represent a small portion of the costs of administering the legislation. It is important to note that processing access requests however actually involves less time than many other essential services. These other services include in-service training of staff, improving records management policy within the body and generally enhancing the ability of the organization to identify records and retrieve information when required.

For more information on how fees and fee estimates should be prepared, see OIPC Report 2005-005 available at www.oipc.sk.ca under Reports.

EXEMPTIONS

Access and privacy laws typically include a number of exceptions to the right of access. In the Saskatchewan statutes, these exceptions are described as "exemptions". There are two kinds:

Mandatory Exemptions

With a mandatory exemption it must be determined if the exemption applies to the record or portion of the record. If it does, then the record or portion of the record must not be disclosed to the applicant. There is no discretion available to the head of the public body.
A dissatisfied applicant has the right to request that the Commissioner review the application of such an exemption.

Discretionary Exemptions

With a discretionary exemption, once it is determined that it applies to a given record or portion of the record the head of the public body must make a decision to either disclose or to withhold. A dissatisfied applicant has the right to request that the Commissioner review the application of such an exemption and whether the discretion has been exercised properly.

MANDATORY EXEMPTION

In the FOIP Act there are 3 mandatory exemptions:

- Confidence of Executive Council
- Third party financial or commercial information
- Personal information of someone other than the applicant

In the LA FOIP Act there are 3 mandatory exemptions:

- Records from other governments
- Third party information
- Personal information of someone other than the applicant

In the HIPA there are no mandatory exemptions.

DISCRETIONARY EXEMPTIONS

In the FOIP Act there are 7 discretionary exemptions:

- Information injurious to intergovernmental relations or national defence
- Law enforcement and investigations
- Advice from officials
- Economic and other interests
- Testing procedures, tests and audits
- Danger to health or safety
- Solicitor-client privilege

In the LA FOIP Act there are 7 discretionary exemptions:

- Law enforcement records/information
- Local authority draft bylaws, resolutions, agendas, meeting deliberations, etc.
- Advice from officials
- Economic interests
- Testing procedures
- Threat to safety or health of an individual
- Solicitor-client privilege

In HIPA there are 6 discretionary exemptions:

- Danger to the mental or physical health or the safety of the applicant or another
- Disclosure would reveal personal health information of another
- Disclosure would reveal the identity of a confidential source
- Quality assurance or professional discipline of a provider
- Information collected for civil, criminal or quasi-judicial proceeding
- Disclosure could interfere with lawful investigation or enforcement of an Act/regulation

SEVERING A RECORD

It is common that a mandatory or discretionary exemption applies to certain portions of a record but not all of the record. In such a case, the public body must sever the portions and disclose the balance of the record to the applicant.

A severed record usually consists of "white out" portions. The section number of the applicable exemption should be handwritten or typed in the white out portion so that it is clear to the applicant which specific exemption has been invoked.

In the event of a review by the Commissioner, the public body must provide the Commissioner with both the severed record and the original record in its unsevered form.

HOW TO MAKE A BREACH OF PRIVACY COMPLAINT

Someone can complain to the Commissioner that:

- Personal information has been collected improperly, or
- Personal information has been used improperly, or
- Personal information has been disclosed improperly, or
- An applicant has been denied access to their personal information, or
- A public body has refused to correct erroneous personal information in their record

The complaint form (Form B to the FOIP Regulations) can be used if the complaint relates to a failure or refusal to make a correction.

For other privacy complaints that cannot be resolved directly by the public body, a letter to the Commissioner is sufficient.

REVIEW BY THE COMMISSIONER

The Commissioner is an independent officer of the Legislative Assembly. That means the Commissioner and office staff are independent of the provincial government and are not accountable to the provincial government. This is important since you may be appealing a decision made by a government office.

You should first attempt to get satisfaction by dealing directly with the government institution (FOIP Act) or the local authority (LA FOIP Act) or trustee (HIA). If you are still dissatisfied you are entitled to ask for a review undertaken by the Saskatchewan Information and Privacy Commissioner. You can contact us at:

Saskatchewan Information and Privacy Commissioner
503 – 1801 Hamilton Street
Regina, Saskatchewan
S4P 4B4

Telephone: (306) 787-8350
Fax: (306) 798-1603
Website: www.oipc.sk.ca

See the Request Form. (page 19)

The request to the Commissioner must be within one year from the date of written notice of the public body's decision.

The Commissioner may refuse a review if the application is frivolous or vexatious, not made in good faith or concerns a trivial matter.

The complainant/applicant and the public body will be invited to make written submissions but the review itself is conducted in private.

The Commissioner has broad powers to examine any record in the possession or under the control of a public body and to enter and inspect any premises of a public body. The Commissioner can compel the attendance and examination of persons.

The Commissioner will prepare and issue a report with his recommendations and send that to the complainant/applicant and to the public body.

APPEAL TO COURT OF QUEEN'S BENCH

Once the Commissioner issues his report with recommendations to address a complaint or access request, the head of the public body has 30 days to accept the recommendation.

If the public body does not provide written confirmation that it will accept the recommendations of the Commissioner the Applicant can appeal to the Court of Queen's Bench. The Commissioner has no status to appeal or to intervene in an appeal.

The Court has the power to issue a binding order.

PUBLIC EDUCATION

An important part of the mandate of the Office of the Information and Privacy Commissioner is public education.

If there are groups or organizations in your constituency that would like a presentation on Saskatchewan access/privacy laws and how to use them, please advise our office.

OTHER RESOURCES

Privacy Commissioner of Canada -- http://www.privcom.gc.ca/index_e.asp

Information Commissioner of Canada -- http://www.infocom.gc.ca/menu-e.asp

INFOSOURCE -- http://infosource.gc.ca/index-e.html

Alberta Information and Privacy Commissioner -- http://www.oipc.ab.ca/home/

British Columbia Information and Privacy Commissioner -- http://www.oipc.bc.ca/

Ontario Information and Privacy Commissioner -- http://www.ipc.on.ca/

F-22.01 REG 1

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

Government of Saskatchewan Freedom of Information

Form A
[Section 5]
Access to Information Request Form

Note: Please direct the request to the appropriate government institution for response.

Access to Information Request Form

(Please Print)

Applicant Information

Last Name		First Name	
Address		City or Town	Province
Postal Code	Telephone *(Residence)*	Telephone *(Work)*	Facsimile

Details of Requested Information

General Information Request ☐ Personal Information Request ☐

Provincial Government Institution

Name of Record *(if known)*

Detailed Description of Record:

I understand that there may be a fee to process this request and that, prior to receiving access to the records that I have requested, I am required to pay that fee unless it is waived.

☐ **Check if requesting waiver of fees:**

I request that payment of fees related to this request be waived because payment will cause me substantial financial hardship. Details are as follows: *(Use reverse of form if additional space is required.)*

Signature of Applicant

For Office Use Only	
Date Received _____	Application No. _____
Expiry Date _____	

White – Government Institution Yellow – Co-ordinator Pink – F.O.I. Unit Gold – Applicant

FREEDOM OF INFORMATION AND
PROTECTION OF PRIVACY

F-22.01 REG 1

Form B

Government of Saskatchewan Freedom of Information

Request For Review

Send this form to: Information and Privacy Commissioner

Application No.: _____ *(For Commissioner's Use)*

Reason For Request

- ☐ I have been refused access to all or part of the record.
- ☐ I have been notified that the record does not exist/cannot be found.
- ☐ I have been notified that the existence of the record shall neither be confirmed nor denied.
- ☐ I have not received a reply to my application, which I submitted _____ days ago.
- ☐ I disagree with the need to extend the 30-day response period.
- ☐ My correction to a personal information record was not accepted as correct/verifiable.
- ☐ I am a third party, and I wish to request a review of a decision to give access to a record that affects my interests.

Details Of Request

Department Name	Date of Application	Application Number

Please explain the details of your request, attaching supporting documentation if possible. Use additional pages if required.

_____

_____

_____

_____

Applicant Information

Name	Telephone
Address	Postal Code
Signature	Date

White - Commissioner Yellow - Government institution Pink - Applicant